IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2008

C O R A M :

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.5020 to 5039 of 1998

M.K.Ayyanar .. Petitioner in W.P.No.5020/1998
K.Periasamy .. Petitioner in W.P.No.5021/1998
A.Muthulingam .. Petitioner in W.P.No.5022/1998
S.Vallimayil .. Petitioner in W.P.No.5023/1998
A.Pasupathy .. Petitioner in W.P.No.5024/1998
G.Balasundaram .. Petitioner in W.P.No.5025/1998
S.Ramalingam .. Petitioner in W.P.No.5026/1998
K.Annamalai .. Petitioner in W.P.No.5027/1998
K.Malathy .. Petitioner in W.P.No.5028/1998
K.Senthil Kumar .. Petitioner in W.P.No.5029/1998
M.Panneerselvam .. Petitioner in W.P.No.5030/1998
T.Thenmozhi .. Petitioner in W.P.No.5031/1998
B.Sudha .. Petitioner in W.P.No.5032/1998
B.Gurubagiam .. Petitioner in W.P.No.5033/1998
K.Balasikhamani .. Petitioner in W.P.No.5034/1998
G.Sivagurunathan .. Petitioner in W.P.No.5035/1998
S.V.Amuthan .. Petitioner in W.P.No.5036/1998
A.G.Kadarkarai .. Petitioner in W.P.No.5037/1998
Gnanatheepam .. Petitioner in W.P.No.5038/1998
M.Mariammal .. Petitioner in W.P.No.5039/1998

-vs-

1. The State of Tamil Nadu, rep.
by the Secretary to Government,
Housing and Urban Development
Department, Fort St.George,
Chennai-600 009.

2. The Special Deputy Collector,
(Land Acquisition),
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai 36.

3. The Special Tahsildar (LA-IV),
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai-35.

4. The Special Tahsildar (LA),
Chennai Metropolitan Development
Authority Schemes,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road, Chennai 8. .. Respondents in all the
writ petitions

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records on the file of the third respondent herein relating to Award No.1/97, dated 31.10.1997 and quash the said Award relating to the respective petitioner's lands in S.Nos.388 part and 389 part (33 cents) (W.P.No.5020 of 1998); S.Nos.390 part and 400 part (96 cents) (W.P.No.5021 of 1998); S.Nos.389 part and 394 part measuring an extent of 33 cents and 49 cents respectively (W.P.No.5022 of 1998); S.Nos.391 part 392 part 393 part (41 cents) (W.P.No.5023 of 1998); S.Nos.388 part, 392 part and 401 part (in all 1.44 acres) (W.P.No.5024 of 1998); S.No.397 part (21 cents) (W.P.No.5025 of 1998); S.No.397 part (46 cents) (W.P.No.5026 of 1998); S.Nos.391 part and 400 part (98 cents) (W.P.No.5027 of 1998); S.Nos.389 part 394 part, 399 part (1 acre 43 cents) (W.P.No.5028 of 1998); S.No.400 part (24 cents) (W.P.No.5029 of 1998); S.No.389 part (33 cents) (W.P.No.5030 of 1998); S.No.401 part (49 cents) (W.P.No.5031 of 1998); S.No.395 part (10 cents) (W.P.No.5032 of 1998); S.Nos.395 part and 398 part (in all 0.95 acres) (W.P.No.5033 of 1998); S.No.390 part (49 cents) (W.P.No.5034 of 1998); S.No.399 part (49 cents) (W.P.No.5035 of 1998); S.No.396 part (24 cents) (W.P.No.5036 of 1998); S.No.391 part (49 cents) (W.P.No.5037 of 1998); S.No.394 part (49 cents) (W.P.No.5038 of 1998); S.No.397 part (47 cents) (W.P.No.5039 of 1998) in Nerkundram Village, Chinmayanagar, Chengalpet District as acquisition proceedings having lapsed as per section 11-A of the Land Acquisition Act.

For petitioners : Mr.Jayakumar

For respondents : Mr.A.Arumugam, Spl.G.P.

****

O R D E R

This batch of writ petitions was filed by the subsequent purchasers of land in various Survey Numbers challenging Award No.1 of 1997 dated 31.10.1997 passed by the third respondent. The lands claiming to be in the possession of the petitioners were acquired under the provisions of the Land Acquisition Act, 1894 (for short, 'the Act') situated in Nerkundram Village for the purpose of the K.K.Nagar Extension Scheme conceived by the second respondent Tamil Nadu Housing Board.

2. The writ petitions were admitted on 17.4.1998. In the interim applications, stay of dispossession alone was granted. Subsequently, when the matters came up on 24.1.2002, the writ petitions were dismissed for want of prosecution. Thereafter, the petitioners filed applications for restoration and this Court restored the writ petitions by an order dated 24.3.2007. The matters have now come to be posted for final disposal.

3. Heard the arguments of Mr.Jayakumar, learned counsel for the petitioners and Mr.A.Arumugam, learned Special Government Pleader for the respondents and perused the records.

4. The lands which were purchased by the petitioners were originally owned by one P.M.Sundaram and four others. From one Soundararajan, a Power of Attorney holder, the petitioners purchased these lands during the year 1995. The petitioners being the subsequent land owners have no right to challenge the acquisition proceedings. The original land owners are not before this Court. When enquiry notices under Sections 9(3) and 10 of the Act were issued, the original land owners did not appear. On verification from the Sub-Registrar's office and getting the Encumbrance Certificates, the present petitioners' names were found out by the acquiring authority. Therefore, fresh notices were issued under Section 9(3) of the Act to the petitioners being persons interested in the land. Despite notices, they had not appeared for the Award Enquiry. Hence, a final Award came to be passed on 31.10.1997. Thereafter, notices under Section 12(2) of the Act were issued to the petitioners asking them to appear for the purpose of finalising the compensation. It is at this stage, the petitioners came to challenge the Award before this Court.

5. Though very many grounds were raised in the affidavits filed in support of the writ petitions, the learned counsel for the petitioners primarily advanced only two contentions. The first contention was that there was a delay in finalising the Award and, therefore, the Award proceedings were hit by the limitation provided under Section 11-A of the Act, which came into force during the pendency of the Award proceedings. Even if calculated in terms of the explanation to Section 11-A of the Act, the Award was delayed by a period of 8 months and 20 days. Therefore, the Award must be quashed.

6. The second contention was that approval was not obtained from the Government before the publication of the Gazette notification. The impugned Award itself shows that the Government had approved the draft on 25.9.1978 before its publication. The draft amendment to the draft declaration was also subsequently approved on 28.4.1980 and thereafter it was gazetted on 11.6.1980. These facts were not noted in the affidavits filed in support of the writ petitions and reply affidavit was also not filed controverting these averments. Therefore, the second objection must fail.

7. The only contention that the petitioners had raised is based upon the Section 11-A introduced by the Land Acquisition Amendment Act, 1984 (with effect from 24.9.1984). Section 11-A of the Act reads as follows:-
''11-A. Period within which an award shall be made.-
The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:
Provided that in case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.
Explanation. - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."
(Emphasis Added)
8. Since the amendment applies to all pending proceedings, according to the learned counsel, the Award under Section 11 of the Act ought to have been passed on or before 24.9.1986. But since the explanation provides for exclusion of any action or proceedings taken being stayed by the order of the Court, he has excluded the time taken by the Supreme Court but wanted to take advantage of the delay in restoring the writ petition which was allowed to go for default. Since the notification was restored by the order of the Supreme Court on 10.11.1995, the earlier period of stay, if calculated, can count for 1 year 3 months and 30 days, and, hence, the Award should have been passed on or before 02.3.1997. But, in the present case, the Award has been passed on 31.10.1997 and, therefore, on the grounds of delay, it should be quashed.

9. Before proceeding with the contentions raised by the learned counsel, it is necessary to list out the chronology of events relating to the acquisition of land purchased by the petitioner from the date Section 4(1) notification was issued till the date the Award was passed including the court proceedings for better appreciation of the facts involved:-

1. 11.06.1975 - Section 4(1) notification in Gazette. (G.O.Rt. No.124, Housing, dated 08.5.1975)
2. 19.08.1975 }
27.08.1975 } Section 5-A Enquiry

3. 06.09.1975 - Objections by the land owners communicated to the requisitioning body (TNHB)

4. 31.03.1977 - TNHB requests to overrule the objections.

5. 24.05.1977 - Remarks communicated to the land owners.

6. 07.06.1978 - Draft declaration under section 6 approved by the Government (G.O.Ms.No.993, Housing).

7. 09.06.1978 - Published in the T.N. Government Gazette.

8. 25.09.1978 - Draft Rates approved by the Government (Lr.No.43637/A2/78-1(H&UD).

9. 25.10.1978 - Tamil Nadu Government Gazette publication.

10. 11.06.1980 - Draft amendment to draft declaration under Section 6 approved by Government Letter No. 18621/A2/80.

11. 11.06.1980 - Published in T.N. Government Gazette.

12. 03.04.1981 - Interim stay of dispossession alone in WMP.2557/1981 in W.P.No.1807 of 1981 obtained by the original land owners.

13. 15.02.1983 - Government issues directions to proceed and complete the acquisition (G.O.No.294, H&UD Dept)

14. 19.02.1991 - W.P.No.1807 of 1981 dismissed for want of prosecution.

15. 25.08.1991 - WMP.15140 of 1991 restoration petition dismissed.

16. 17.09.1991 - Revision Application 21 of 1991 allowed. WP.1807 of 1981 restored to file.

17. 29.10.1991 - W.P.No.1807 of 1981 allowed by Division Bench. Section 4(1) notification quashed.

18. 10.11.1995 - Civil Appeal No.10190 of 1995 allowed by Supreme Court. Section 4(1) Notification stood restored.

19. 1995 - Petitioners purchase their lands from one Soundarajan, Power Agent of original land

owners.

20. - - Notice u/s.9(3) and 10 to subsequent purchasers. They didn't attend the Award Enquiry.

21. 16.4.1997 }
17.4.1997 } Award Enquiry
21.4.1997 }

22. 31.10.1997 - Award passed (impugned in this batch).

10. The learned counsel for the petitioners relied upon the following passage found in para 11 of the judgment of the Supreme Court in Padmasundara Rao -vs- State of Tamil Nadu reported in (2002) 3 SCC 533 :
"Para 11: It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the notification under Section 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. In Ram Chand v. Union of India (1994 (1) SCC 44), it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count."

11. The learned counsel also placed further reliance upon the judgment of the Supreme Court in Ashok Kumar & Others -vs- State of Haryana & another reported in (2007) 3 SCC 470 and referred to the following passages found in paragraphs 14, 17 and 18 :-
''Para 14 : Proviso (ii) appended to sub-section (1) of Section 6 of the Act clearly debars making of any declaration in respect of any particular land covered by a notification issued under sub-section (1) of Section 4 after the expiry of one year from the date of publication thereof. Explanation (1) appended to the said proviso, however, stipulates that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1), is stayed by an order of a court, shall be excluded. On a plain reading of the aforementioned provisions, there cannot be any doubt whatsoever that the period which is required to be excluded would be one, during which the action or proceeding taken was subjected to any order of stay passed by a competent court of law.
Para 17. We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the Explanation appended

thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by Act 68 of 1984 and which came into force w.e.f. 24-9-1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit.
Para 18. There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise; the same would continue to operate."
He also submitted that what applies to the Section 6 declaration will also apply to the Award under Section 11 in terms of Section 11-A of the Act.

12. In the present case, it must be stated that no Award could have been passed when a Division Bench of this Court has set aside the notification under Section 4(1) by its final order dated 29.10.1991. Therefore, no proceedings was pending till the Supreme Court by its judgment dated 10.11.1995 allowed the Civil Appeal and restored the Section 4(1) notification. Because of that, Section 6 draft declaration published in the Government Gazette on 07.6.1978 also came to life. Therefore, the day in which the Section 6 declaration was made alive was by a judgment of the Supreme Court dated 10.11.1995. Hence, the limitation will have to be calculated in terms of proviso to Section 11-A of the Act. If calculated from that date, the final Award has been passed on 31.10.1997, which is well within the limitation prescribed under the Act.

13. The contention of the petitioners is highly contrived and the explanation in the present case does not come into operation when the entire notification is set at naught by a Division Bench of this Court. The explanation to Section 11-A will be available only to pending proceedings and if any order of stay against further proceedings was granted by the Court, it will have to be excluded. In a case where the entire proceedings have been quashed and given life only after the final judgment of the Supreme Court, then the proviso alone will apply to the present case. The Award that had been passed is well within the time limit prescribed under the Act.

14. In this context, it is necessary to refer to the decision of the Supreme Court which had dealt with the scope of Section 11-A of the Act in the case relating to Smt.Bailamma (dead) and others -vs- Poornaprajna House Building Co-operative Society and others reported in (2006) 2 SCC 416. The following passages found in paragraphs 13, 14 and 16 of the said decision may be usefully extracted:-
''Para 13. : The submission that the stay order was obtained by the Society itself is of no consequence, having regard to the language of Explanation to Section 11-A of the Act. The exclusion of the period during which the order of stay operated is not dependant upon the party obtaining such an order. An order passed by the court must be obeyed by all concerned. In the instant case the Society moved the High Court and obtained an order of stay. In effect, the order operated in such a manner that the Government was prevented from granting approval to the award even if it so desired, nor could it refuse approval during the period the order of stay operated. Therefore, Explanation to Section 11-A came into operation and in accordance therewith the period during which the order of stay operated must be excluded from the total time taken to make the award.
Para 14. Reliance was placed by the appellants on the observations made by this Court in Yusufbhai Noormohmed Nendoliya v. State of Gujarat (1991) 4 SCC 531). In our view the aforesaid decision in fact supports the case of the respondents. In the aforesaid judgment it was held: (SCC p.535, para 8)
8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act.
That was no doubt a case where an order of injunction was obtained by the landholder restraining

land acquisition authorities from taking possession of the land. It was, in that context, that this Court observed that to get the benefit of the said provision the landholder who seeks the benefit must not have obtained any order from court restraining any action or proceedings in pursuance of declaration under Section 6 of the Act. It is, therefore, not possible to accept the submission urged on behalf of the appellants that Section 11-A of the Act must be read in a narrow sense so as to apply to only those cases where the landowner himself obtained an order of stay or injunction. We are not prepared to add words in the Explanation by reading into it a provision that gives to the Explanation a narrower operation than what was intended for it by the legislature, so as to apply only to cases where an order of injunction is obtained by the landowner and not by anyone else.
... ...
Para 16. This Court emphasised the fact that Section 11-A was enacted with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the Act were that the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them and it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. The emphasis, therefore, was on the Collector making his award within the period prescribed. However, the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It, therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made, an acquisition proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter. Explanation to Section 11-A was meant to deal with situations of this kind. The Explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a landowner alone. One can conceive of cases where apart from landowners others may be interested in stalling the land acquisition proceeding. It is no doubt true that in most of the reported decisions the party that obtained the stay order happened to be the owner of the land acquired. But that will not lead us to the conclusion that the Explanation applied only to cases where stay had been obtained by the owners of the land. There may be others who may be interested in obtaining an order of stay being aggrieved by the acquisition proceeding. It may be that on account of development of that area some persons in the vicinity may be adversely affected, or it may be for any other reason that persons in the locality are adversely affected by the project for which acquisition is being made. One can imagine many instances in which a person other than the owner may be interested in defeating the acquisition proceeding. Once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration, they cannot be faulted for the delay, and therefore, the period during which the order of stay operates must be excluded. In a sense, operation of the order of stay provides a justification for the delay in taking further steps in the acquisition proceeding for which the authorities are not to blame. "
(Emphasis Added)

15. If it is seen in the context of the decision referred to above, it can very well be seen that the Award impugned in this batch of writ petitions is not hit by the proviso to Section 11-A of the Act. The manner of calculation urged by the petitioners is not available in terms of the Act. Further the petitioners were subsequent purchasers and their purchases have not been notified by any mutation made in the revenue records. The petitioners had at no point of time participated in the proceedings up to the stage of passing final Award. The original land owners have abandoned their objections by selling the land after the decision of the Supreme Court came to be known to them. The plea of

innocent purchase made by a buyer has no place while impugning a land acquisition validly made under the Act.

16. In the light of the above all, the writ petitions will stand dismissed. No costs.

js 10.12.2008

Index :yes.
Internet :yes.

To

1. The Secretary to Government,
Housing and Urban Development
Department, Fort St.George,
Chennai-600 009.

2. The Special Deputy Collector,
(Land Acquisition),
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai 36.

3. The Special Tahsildar (LA-IV),
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai-35.

4. The Special Tahsildar (LA),
Chennai Metropolitan Development
Authority Schemes,
Thalamuthu Natarajan Maligai,
Gandhi Irwin Road, Chennai 8.

K. CHANDRU, J.

js

W.P.Nos.5020 to
5039 of 1998 and
connected MPs.

10.12.2008